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| 10/538,718 | 09/28/2006 | Stefan Neumeier | A-9598 | 6790 |
| 20741 7590 03/10/2010 HOFFMAN WASSON & GITLER, P.C. CRYSTAL CENTER 2, SUITE 522 2461 SOUTH CLARK STREET ARLINGTON, VA 22202-3843 | | | | |
| EXAMINER | | | | |
| PATEL, YOGESH P | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/538,718

Applicant(s)

NEUMEYER, STEFAN

Examiner

YOGESH PATEL

Art Unit

3732

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 18, 19 and 34-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-17, 20-33 (group I and species d: figure 4a) in the reply filed on 12/18/2009 is acknowledged. Claims 18-19, 34-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Claims 18-19 are directed to non-elected species, figures 18, 21 respectively.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it includes legal phrases. Correction is required. See MPEP § 608.01(b).

Specification

- The substitute specification filed on 06/13/2005 is not entered because under 37 CFR 1.125 (c) a mark-up copy showing all the changes relative to the immediate prior version of the specification of record.

- The title of the invention is not descriptive. Usage of legal phrases in a title is not permitted. See 37 CFR 1.72. The following title is suggested:
Abutment for dental implant.

Drawings

The drawings (figures 4, 6, 7, 8, 9) are objected to because each figure should be labeled separately (for example, figure 4a, 4b, 6a, 6b, etc). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 30 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No adequate support found for an elastic or flexible composite layer.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claims 1-33 are indefinite because it is not clear what are the meets and bound of the claims.

Regarding claims 20-21, it is not clear what is meant by "this course is buccal-labial and lingual-palatinal."

Regarding claim 24, no antecedent basis found for "the individual anatomical structural."

Regarding claim 27, it is not clear what are the meets and bound of the claim. For example, upper jaw no. 1, no. 2, m/d, b/p etc. and "but somewhat more oval." The Examiner suggests clarifying the structure of the abutment.

Regarding claim 28, no antecedent basis found for "the base."

Regarding claim 31, it is not clear what garland shaped stage and base bond are referring to. Please clarify.

Regarding claim 32, it is not clear what are the units for length, diameter, etc. Further, no antecedent basis found for "the cap."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10, 14, 15-16, 17, 20, 25, 26, 28, 29, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Osorio et al. (2001/0021498).

Osorio discloses an abutment 12 (fig. 1) that is customized based on patient's teeth (abstract). Therefore, it is inherent that each abutment is different in form and adapt to natural form of tooth. Regarding claims 15-16 the abutment is a basis for a crown.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osorio et al. as applied to claim 1. Osorio fail to disclose the specifics of the abutment. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to make the abutment size reduced, since it has been held that discovering the optimum or workable ranges involves only routine skills in the art. *In re Aller*, 105 USPQ 233. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Osorio by selecting the material zircon oxide or metal or alu.oxide since the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll co. v. International Corp.*, 325 U.S. 327, 65.

Claims 11-13, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osorio et al. as applied to claim 1, and further in view of Morgan (6,991,462).

Osorio discloses the invention substantially as claimed except for treating the surface of the abutment for proper bonding.

Morgan teaches the surface be sandblasted to enhance bonding (col. 3, lines 57-58). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Osorio by providing enhanced surface as taught by

Morgan in order to enhance the bonding of the abutment to the implant. Further, regarding claim 22, it is well-known in the art to protect or cover the treated surface in order to avoid the surface from getting contaminated (e.g. dirt, bacteria, etc).

Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osorio et al. as applied to claim 1 above, and further in view of Klardie et al. (6,048,204).

Osorio discloses the invention substantially as claimed except for healing materials on the shaft or abutment.

Klardie teaches providing coating of hydroxyapatite to facilitate healing and bone growth. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Osorio by providing hydroxyapatite as taught by Klardie in order to facilitate healing and bone growth.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOGESH PATEL whose telephone number is (571)270-3646. The examiner can normally be reached on 8:00 to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YOGESH PATEL/
Examiner, Art Unit 3732

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732